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## SENATE BILL No. 193

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-2-15-4; IC 35-33-5-5; IC 35-48-4.

**Synopsis:** Controlled substances. Permits the destruction of chemically contaminated equipment used in the illegal manufacture of a controlled substance if certain conditions are met. Provides that a law enforcement officer has the right to inspect a retailer's log of ephedrine or pseudoephedrine sales. Makes sodium chloride a precursor, prohibits the possession of two or more precursors with the intent to manufacture a controlled substance, and makes the possession of anhydrous ammonia with the intent to manufacture amphetamine a Class D felony that may be enhanced under certain circumstances. Requires a law enforcement agency that discovers a child less than 18 years of age at a drug laboratory to notify the department of child services.

**Effective:** July 1, 2006.

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**Bray, Hume**

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January 9, 2006, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE BILL No. 193

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-2-15-4, AS ADDED BY P.L.192-2005,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2006]: Sec. 4. A law enforcement agency that discovers a  
4 child less than ~~fourteen (14)~~ **eighteen (18)** years of age at a  
5 ~~methamphetamine laboratory site used for the illegal manufacture of~~  
6 **a controlled substance (as defined in IC 35-48-1-9)** shall notify the  
7 ~~division of family and children; department of child services.~~  
8 SECTION 2. IC 35-33-5-5, AS AMENDED BY P.L.187-2005,  
9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 2006]: Sec. 5. (a) All items of property seized by any law  
11 enforcement agency as a result of an arrest, search warrant, or  
12 warrantless search, shall be securely held by the law enforcement  
13 agency under the order of the court trying the cause, except as provided  
14 in this section.  
15 (b) Evidence that consists of property obtained unlawfully from its  
16 owner may be returned by the law enforcement agency to the owner  
17 before trial, in accordance with IC 35-43-4-4(h).

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(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at ~~such time as it is~~ a convenient time, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(3) A firearm that has been seized from a person who is dangerous (as defined in IC 35-47-13-1) shall be retained, returned, or disposed of in accordance with IC 35-47-13.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) A law enforcement agency may destroy or cause to be destroyed chemicals, ~~or~~ controlled substances, **or chemically contaminated equipment (including drug paraphernalia as described in IC 35-48-4-8.5)** associated with the illegal manufacture of drugs or controlled substances without a court order if all the following conditions are met:

(1) The law enforcement agency collects and preserves a sufficient quantity of the chemicals, ~~or~~ controlled substances, **or chemically contaminated equipment** to demonstrate that the chemicals, ~~or~~ controlled substances, **were or chemically contaminated equipment was** associated with the illegal manufacture of drugs or controlled substances.

(2) The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quantity of chemicals, ~~and~~ controlled substances, **and chemically contaminated equipment.**

(3) The law enforcement agency completes a chemical inventory

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report that describes the type and quantities of chemicals, ~~and~~  
controlled substances, **and chemically contaminated equipment**  
present at the illegal manufacturing site.

The photographs and description of the property shall be admissible  
into evidence in place of the actual physical evidence.

(f) For purposes of preserving the record of any conviction on  
appeal, a photograph demonstrating the nature of the property, and an  
adequate description of the property must be obtained before the  
disposition of it. In the event of a retrial, the photograph and  
description of the property shall be admissible into evidence in place  
of the actual physical evidence. All other rules of law governing the  
admissibility of evidence shall apply to the photographs.

(g) The law enforcement agency disposing of property in any  
manner provided in subsection (b), (c), or (e) shall maintain certified  
records of any ~~such~~ disposition **under subsection (b), (c), or (e)**.  
Disposition by destruction of property shall be witnessed by two (2)  
persons who shall also attest to the destruction.

(h) This section does not affect the procedure for the disposition of  
firearms seized by a law enforcement agency.

(i) A law enforcement agency that disposes of property by auction  
under this section shall permanently stamp or otherwise permanently  
identify the property as property sold by the law enforcement agency.

(j) Upon motion of the prosecuting attorney, the court shall order  
property seized under IC 34-24-1 transferred, subject to the perfected  
liens or other security interests of any person in the property, to the  
appropriate federal authority for disposition under 18 U.S.C. 981(e), 19  
U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted  
by the United States Department of Justice.

SECTION 3. IC 35-48-4-14.5, AS AMENDED BY P.L.192-2005,  
SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2006]: Sec. 14.5. (a) As used in this section, "chemical  
reagents or precursors" refers to one (1) or more of the following:

- (1) Ephedrine.
- (2) Pseudoephedrine.
- (3) Phenylpropanolamine.
- (4) The salts, isomers, and salts of isomers of a substance  
identified in subdivisions (1) through (3).
- (5) Anhydrous ammonia or ammonia solution (as defined in  
IC 22-11-20-1).
- (6) Organic solvents.
- (7) Hydrochloric acid.
- (8) Lithium metal.

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- 1 (9) Sodium metal.
- 2 (10) Ether.
- 3 (11) Sulfuric acid.
- 4 (12) Red phosphorous.
- 5 (13) Iodine.
- 6 (14) Sodium hydroxide (lye).
- 7 (15) Potassium dichromate.
- 8 (16) Sodium dichromate.
- 9 (17) Potassium permanganate.
- 10 (18) Chromium trioxide.
- 11 (19) Benzyl cyanide.
- 12 (20) Phenylacetic acid and its esters or salts.
- 13 (21) Piperidine and its salts.
- 14 (22) Methylamine and its salts.
- 15 (23) Isosafrole.
- 16 (24) Safrole.
- 17 (25) Piperonal.
- 18 (26) Hydriodic acid.
- 19 (27) Benzaldehyde.
- 20 (28) Nitroethane.
- 21 (29) Gamma-butyrolactone.
- 22 (30) White phosphorus.
- 23 (31) Hypophosphorous acid and its salts.
- 24 (32) Acetic anhydride.
- 25 (33) Benzyl chloride.
- 26 (34) Ammonium nitrate.
- 27 (35) Ammonium sulfate.
- 28 (36) Hydrogen peroxide.
- 29 (37) Thionyl chloride.
- 30 (38) Ethyl acetate.
- 31 (39) Pseudoephedrine hydrochloride.

32 **(40) Sodium chloride.**

33 (b) A person who possesses more than ten (10) grams of ephedrine,  
 34 pseudoephedrine, or phenylpropanolamine, pure or adulterated,  
 35 commits a Class D felony. However, the offense is a Class C felony if  
 36 the person possessed:

- 37 (1) a firearm while possessing more than ten (10) grams of
- 38 ephedrine, pseudoephedrine, or phenylpropanolamine, pure or
- 39 adulterated; or
- 40 (2) more than ten (10) grams of ephedrine, pseudoephedrine, or
- 41 phenylpropanolamine, pure or adulterated, in, on, or within one
- 42 thousand (1,000) feet of:

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- 1 (A) school property;  
 2 (B) a public park;  
 3 (C) a family housing complex; or  
 4 (D) a youth program center.
- 5 (c) A person who possesses anhydrous ammonia or ammonia  
 6 solution (as defined in IC 22-11-20-1) with the intent to manufacture  
 7 methamphetamine ~~or amphetamine~~, schedule II controlled ~~substance~~  
 8 **substances** under IC 35-48-2-6, commits a Class D felony. However,  
 9 the offense is a Class C felony if the person possessed:
- 10 (1) a firearm while possessing anhydrous ammonia or ammonia  
 11 solution (as defined in IC 22-11-20-1) with intent to manufacture  
 12 methamphetamine ~~or amphetamine~~, schedule II controlled  
 13 ~~substance~~ **substances** under IC 35-48-2-6; or  
 14 (2) anhydrous ammonia or ammonia solution (as defined in  
 15 IC 22-11-20-1) with intent to manufacture methamphetamine ~~or~~  
 16 **amphetamine**, schedule II controlled ~~substance~~ **substances** under  
 17 IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:
- 18 (A) school property;  
 19 (B) a public park;  
 20 (C) a family housing complex; or  
 21 (D) a youth program center.
- 22 (d) Subsection (b) does not apply to a:  
 23 (1) licensed health care provider, pharmacist, retail distributor,  
 24 wholesaler, manufacturer, warehouseman, or common carrier or  
 25 an agent of any of these persons if the possession is in the regular  
 26 course of lawful business activities; or  
 27 (2) person who possesses more than ten (10) grams of a substance  
 28 described in subsection (b) if the substance is possessed under  
 29 circumstances consistent with typical medicinal or household use,  
 30 including:
- 31 (A) the location in which the substance is stored;  
 32 (B) the possession of the substance in a variety of:  
 33 (i) strengths;  
 34 (ii) brands; or  
 35 (iii) types; or  
 36 (C) the possession of the substance:  
 37 (i) with different expiration dates; or  
 38 (ii) in forms used for different purposes.
- 39 (e) A person who possesses two (2) or more chemical reagents or  
 40 precursors with the intent to manufacture  
 41 ~~(1) Methcathinone, a schedule I controlled substance under~~  
 42 ~~IC 35-48-2-4;~~

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(2) ~~Methamphetamine, a schedule H controlled substance under IC 35-48-2-6;~~

(3) ~~Amphetamine, a schedule H controlled substance under IC 35-48-2-6; or~~

(4) ~~Phentermine, a schedule IV controlled substance under IC 35-48-2-10;~~

**a controlled substance** commits a Class D felony.

(f) An offense under subsection (e) is a Class C felony if the person possessed:

(1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6; or

(2) two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(g) A person who sells, transfers, distributes, or furnishes a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursors to manufacture methamphetamine, methcathinone, amphetamine, or phentermine commits unlawful sale of a precursor, a Class D felony.

SECTION 4. IC 35-48-4-14.7, AS ADDED BY P.L.192-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14.7. (a) This section does not apply to the following:

(1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.

(2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (f).

(3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or

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1 manufacturer, the person is required to report a suspicious order  
2 to the state police department in accordance with subsection (f).

3 (b) The following definitions apply throughout this section:

4 (1) "Constant video monitoring" means the surveillance by an  
5 automated camera that:

6 (A) records at least one (1) photograph or digital image every  
7 ten (10) seconds;

8 (B) retains a photograph or digital image for at least  
9 seventy-two (72) hours;

10 (C) has sufficient resolution and magnification to permit the  
11 identification of a person in the area under surveillance; and

12 (D) stores a recorded photograph or digital image at a location  
13 that is immediately accessible to a law enforcement officer.

14 (2) "Convenience package" means a package that contains a drug  
15 having as an active ingredient not more than one hundred twenty  
16 (120) milligrams of ephedrine or pseudoephedrine, or both.

17 (3) "Ephedrine" means pure or adulterated ephedrine.

18 (4) "Pseudoephedrine" means pure or adulterated  
19 pseudoephedrine.

20 (5) "Suspicious order" means a sale or transfer of a drug  
21 containing ephedrine or pseudoephedrine if the sale or transfer:

22 (A) is a sale or transfer that the retail distributor, wholesaler,  
23 or manufacturer is required to report to the United States Drug  
24 Enforcement Administration;

25 (B) appears suspicious to the retail distributor, wholesaler, or  
26 manufacturer in light of the recommendations contained in  
27 Appendix A of the report to the United States attorney general  
28 by the suspicious orders task force under the federal  
29 Comprehensive Methamphetamine Control Act of 1996; or

30 (C) is for cash or a money order in a total amount of at least  
31 two hundred dollars (\$200).

32 (6) "Unusual theft" means the theft or unexplained disappearance  
33 from a particular retail store of drugs containing ten (10) grams or  
34 more of ephedrine, pseudoephedrine, or both in a twenty-four (24)  
35 hour period.

36 (c) This subsection does not apply to a convenience package. A  
37 person may sell a drug that contains the active ingredient of ephedrine,  
38 pseudoephedrine, or both only if the person complies with the  
39 following conditions:

40 (1) The person does not sell the drug to a person less than  
41 eighteen (18) years of age.

42 (2) The person does not sell drugs containing more than three (3)

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grams of ephedrine or pseudoephedrine, or both in one (1) transaction.

(3) The person requires:

(A) the purchaser to produce a state or federal identification card;

(B) the purchaser to complete a paper or an electronic log in a format approved by the state police department with the purchaser's name, address, and driver's license or other identification number; and

(C) the clerk who is conducting the transaction to initial or electronically record the clerk's identification on the log.

Records from the completion of a log must be retained for at least two (2) years. ~~and may be inspected by~~ A law enforcement officer **has the right to inspect and copy the log or the records from the completion of a log** in accordance with state and federal law.

A retailer who in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct. This subdivision expires June 30, 2008.

(4) The person stores the drug:

(A) behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee; or

(B) directly in front of the pharmacy counter in the direct line of sight of an employee at the pharmacy counter, in an area under constant video monitoring, if the drug is sold in a retail establishment that:

(i) is a pharmacy; or

(ii) contains a pharmacy that is open for business.

(d) A person may not purchase drugs containing more than three (3) grams of ephedrine, pseudoephedrine, or both in one (1) week.

(e) This subsection only applies to convenience packages. A person may not sell drugs containing more than one hundred twenty (120) milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction if the drugs are sold in convenience packages. A person who sells convenience packages must secure the convenience packages in at least one (1) of the following ways:

(1) The convenience package must be stored not more than thirty (30) feet away from a checkout station or counter and must be in the direct line of sight of an employee at the checkout station or counter.

(2) The convenience package must be protected by a reliable

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1 anti-theft device that uses package tags and detection alarms  
2 designed to prevent theft.

3 (3) The convenience package must be stored in restricted access  
4 shelving that permits a purchaser to remove not more than one (1)  
5 package every fifteen (15) seconds.

6 (4) The convenience package must be stored in an area that is  
7 under constant video monitoring, and a sign placed near the  
8 convenience package must warn that the area is under constant  
9 video monitoring.

10 (f) A retail distributor, wholesaler, or manufacturer shall report a  
11 suspicious order to the state police department in writing.

12 (g) Not later than three (3) days after the discovery of an unusual  
13 theft at a particular retail store, the retailer shall report the unusual theft  
14 to the state police department in writing. If three (3) unusual thefts  
15 occur in a thirty (30) day period at a particular retail store, the retailer  
16 shall, for at least one hundred eighty (180) days after the date of the last  
17 unusual theft, locate all drugs containing ephedrine or pseudoephedrine  
18 at that particular retail store behind a counter in an area inaccessible to  
19 a customer or in a locked display case that makes the drug unavailable  
20 to customers without the assistance of an employee.

21 (h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance  
22 after February 1, 2005, that is more stringent than this section.

23 (i) A person who knowingly or intentionally violates this section  
24 commits a Class C misdemeanor. However, the offense is a Class A  
25 misdemeanor if the person has a prior unrelated conviction under this  
26 section.

27 (j) Before June 30, 2007, the state police department shall submit a  
28 report to the legislative council detailing the effectiveness of this  
29 section in reducing the illicit production of methamphetamine. The  
30 report must describe the number of arrests or convictions that are  
31 attributable to the identification and logging requirements contained in  
32 this section, and must include recommendations for future action. The  
33 report must be in an electronic format under IC 5-14-6.

34 **SECTION 5. [EFFECTIVE JULY 1, 2006] IC 35-48-4-14.5 and**  
35 **IC 35-48-4-14.7, both as amended by this act, apply only to crimes**  
36 **committed after June 30, 2006.**

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